

NOTICE OF PROPOSED RULEMAKING

TITLE 9. REHABILITATIVE and DEVELOPMENTAL SERVICES DIVISION 4. ALCOHOL AND DRUG PROGRAMS CHAPTER 3. Programs for Alcohol and Drug Impaired Drivers

Amendments to Sections 9795 to 9886

NOTICE IS HEREBY GIVEN that the Department of Alcohol and Drug Programs (the Department) proposes to amend California Code of Regulations (CCR), title 9, sections 9795 through 9886, concerning programs for alcohol and drug impaired drivers.

AUTHORITY AND REFERENCE

Government Code section 12838.4 and Health and Safety Code sections 11755, 11835 and 11836.15, authorizes the Department to amend the proposed regulations. These regulations implement, interpret and make specific Health and Safety Code sections 11837(c)(2) as enacted by AB 1353 (Chapter 164, Statutes of 2005); section 11837(e), and section 11837.4, as well as Vehicle Code sections 23540 and 23542, and Penal Code sections 191.5 and 192 (c)(3).

PUBLIC HEARING

The Department has not scheduled a public hearing on this proposed regulatory action. However, the Department will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days before the close of the written comment period.

The purpose of a public hearing is to receive oral comments about the proposed regulation. It is not a forum to debate the proposed regulation. No decision regarding the permanent adoption of these regulations will be rendered at this hearing. Written or facsimile comments submitted during the prescribed comment period have the same significance and influence as oral comments presented at a public hearing.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulations to the regulations coordinator. THE WRITTEN COMMENT PERIOD ON THIS PROPOSED REGULATORY ACTION WILL COMMENCE ON FEBRUARY 25, 2011, AND WILL CLOSE AT 5:00 P.M. ON APRIL 11, 2011. In order for the comments to be considered by the Department, they must be submitted in writing (by mail,

facsimile or e-mail) to the Department's Regulation Coordinator identified in this Notice no later than the close of the comment period.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Chapter 3, Division 4, Title 9 CCR currently contains regulations for licensure of DUI programs, which provide education and counseling services to individuals convicted of a Driving Under the Influence (DUI) offense. This rulemaking will modify existing regulations concerning DUI programs, their administration and procedures for enrollees and providers. Current regulations do not provide for the term Multiple Offender and they are not as specific regarding the counselor duties versus the duties for the administration of these programs. The current regulations will be updated to be consistent with the statutes in the Health and Safety Code and changes in 2007 to the Vehicle Code. The proposed regulations will contain language indicating an increase in program services from six months to nine months for participants ordered by the court to participate in a DUI program pursuant to Assembly Bill 1353 (Chapter 164, Statutes of 2005). In addition, significant portions of these changes were supported by the former DUI Advisory Workgroup, which was composed of licensed providers of DUI program services, County alcohol and drug program administrators, the Department of Motor Vehicles, and other interested parties. Major highlights and changes of this regulation action are listed below:

- The definition section has been revised modifying the existing terminology of Drinking Driver Program to "Driving Under the Influence Program" or "DUI."
- The term "Multiple Offender" was updated for consistency with the Vehicle Code which was amended in 2007.
- In addition, the term "Significant Other" was added and defined in order to maintain consistency with Health and Safety Code section 11837(e).
- The term "Working Days" was also added and defined because it carries a distinction from "Days" which is already defined in the existing regulations.
- Program enrollment and intake interviews have been combined and procedures for program enrollment have been added, allowing administrative or clerical staff to conduct the non counseling program enrollment.
- Certified counseling staff shall be required to conduct the intake interview in lieu of other program staff. Existing regulations require the licensee to conduct the first face-to-face interview within 21 days of enrollment. These regulations now specify that the "counselor" shall conduct these interviews instead of licensee. Modification of the face-to-face interview

schedule will maintain consistency with changes to the Health and Safety Code section 11837(c) (20 as enacted by AB 1353. (Chapter 164, Statutes of 2005).

- Program services now include nine months for participants ordered by the court to participate in a DUI program pursuant to Assembly Bill 1353. (Chapter 164, Statutes of 2005)
- The program director/administrator is required to review requests for leave of absence instead of the county alcohol and drug program administrator.
- The inter-program transfer process has been updated to reflect actual practice.
- Standards for dismissal of participants have been clarified and strengthened to allow DUI programs to dismiss participants who act in a threatening manner toward staff or other participants.
- The program may charge participants a maximum fee of \$5 (instead of \$10) for processing a transfer to another licensed DUI program for those participants who are eligible for the minimum fee. Ancillary fees have been limited and specified in this regulation.
- These modified regulations require that the licensee justify to ADP any charges for additional ancillary services which exceed the minimum amount listed.
- The maximum fine assessed for a missing Notice of Completion is limited to \$1,500 per Certificate. (not to exceed a maximum of \$5,000 per Health & Saf. Code § 11838.4.)

DISCLOSURES REGARDING THE PROPOSED ACTION

Local Mandates: The Department has determined that the proposed action imposes no mandate upon local agencies or school districts.

Fiscal Impact Statement: The Department has made the following initial determinations:

- Cost to any local agency or school district which must be reimbursed in accordance with Gov. Code §§ 17500 through 17630: **None**
- Cost or savings to any state agency: **None**

- Other non-discretionary cost or savings imposed on local agencies: **None**
- Cost or savings in federal funding to the state: **None**

Significant Statewide Adverse Economic Impact on Business: The Department has determined that there is no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

Cost Impacts on Representative Private Persons or Businesses: The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Assessment of Effects on Job and/or Business Creation, Elimination or Expansion: The Department has determined that adoption of this regulation will not: (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing business within California; or (3) affect the expansion of businesses currently doing business within California.

Effect on Housing Costs: The Department has made an initial determination that the proposed action will have no significant affect on housing costs.

Small Business Determination: The Department has determined that the proposed regulation does not have an adverse economic impact on small business because this regulation merely codifies existing policy into regulation.

CONSIDERATION OF ALTERNATIVES

The Department must determine that no reasonable alternative it considered, or that has otherwise been identified and brought to its attention, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons, than the proposed regulatory action. Interested parties are accordingly invited to present statements or arguments with respect to any alternatives to the proposed changes during the public comment period.

CONTACT PERSON

Please direct requests for copies of the Initial Statement of Reasons, the proposed amended Text of the regulation, or other information upon which the rulemaking is based to:

Elizabeth Geiger, Regulations Coordinator
Office of Legal Services, ADP
1700 K Street, 5th Floor
Sacramento, CA 95811
Telephone: (916) 327-8973
Facsimile: (916) 327-7516
E-mail: egeiger@adp.ca.gov

For program information regarding this regulatory action, please contact:

Jose Gonzalez, Manager
Office of Criminal Justice Collaboration (DUI Program Branch)
1700 K Street, 5th Floor
Sacramento, CA 95811
Telephone: (916) 324-5908
Facsimile: (916) 324-8196
E-mail: jgonzalez@adp.ca.gov

AVAILABILITY OF PROPOSED TEXT AND INITIAL STATEMENT OF REASONS

The Department will make the rulemaking file available to the public throughout the rulemaking process at its offices located at 1700 K Street, 5th Floor, Sacramento, California. As of the date this Notice is published in the Office of Administrative Law's Notice Register, the rulemaking file consists of this Notice, Form 400 (Notice of Submission of Regulations), the proposed text of the regulation, Initial Statement of Reasons and Form 399 (Fiscal Impact Statement), and any information upon which the proposal is based. Copies of these documents may be obtained by contacting the Department's Contact Person at the address and phone number listed above or by visiting the Department's Website at: <http://www.adp.ca.gov/LAR/regs.shtml>

AVAILABILITY OF CHANGES TO PROPOSED TEXT

After considering all timely and relevant comments received, the Department may adopt the proposed regulations substantially as described in this Notice. If the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised. Please send requests for copies of any modified regulations text to the attention of the Contact Person, Elizabeth Geiger, or by visiting the Department's website at <http://www.adp.ca.gov/LAR/regs.shtml>. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained from the Department's Regulation Coordinator or by visiting the Department's website at:

<http://www.adp.ca.gov/LAR/regs.shtml>

****END****